

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LAURO LOPEZ

Claimant

VS.

IBP, INC.

Self-Insured Respondent

Docket No. **236,662**

ORDER

The claimant requested review of the Award of Administrative Law Judge Pamela J. Fuller dated October 4, 2000. The case was submitted on the summary docket calendar on December 19, 2000. Workers Compensation Board Member Gary Korte recused himself from these proceedings. Jeff K. Cooper was appointed Workers Compensation Board Member Pro Tem to replace Mr. Korte.

APPEARANCES

Claimant appeared by his attorney, C. Albert Herdoiza. The self-insured respondent appeared by its attorney, Wendel W. Wurst. There were no other appearances.

RECORD & STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge determined that the claimant had sustained a work-related injury on April 2, 1998, when he fell from a ladder and injured his left knee. The Administrative Law Judge awarded the claimant a 9 percent permanent partial disability to his left lower extremity, limited future medical to only the left knee and determined that the claimant had failed to give timely notice regarding the claimant's back and hip complaints.

On review, the claimant alleges that the evidence establishes that he sustained a whole body functional impairment, that the award of future medical should not be limited to the left lower extremity and that because the back and hip complaints were a natural consequence of the knee injury additional notice was not required.

Respondent contends that the claimant failed to make timely notice for any alleged whole body injury, that the back and hip complaints were the result of a new accident and the decision of the administrative law judge should be affirmed in all respects.

FINDINGS OF FACT

Having reviewed the entire evidentiary record filed herein, and in addition to the stipulations of the parties, the Workers Compensation Board finds:

The claimant sustained a work-related injury to his left knee in a fall from a ladder on April 2, 1998. The claimant was seen by the plant nurse and Dr. Zeller. Following a short course of conservative treatment, the claimant was referred to Dr. Gary Kramer. An MRI revealed a rupture of his anterior cruciate ligament as well as a tear of the medial meniscus. On May 21, 1998, Dr. Kramer performed surgery consisting of a partial medial meniscectomy and anterior cruciate reconstruction.

Following surgery, the claimant was in physical therapy for approximately a month and then was returned to light-duty work until he returned to his regular duties in January 1999.

The claimant testified that from the time of the initial injury through treatment with Dr. Kramer, as well as examination by Dr. Prostic and a court ordered independent medical examination by Dr. Tisdale on May 12, 1999, that his complaints of pain were limited to his left knee. Thereafter, on May 23, 2000, the claimant was referred by his counsel for an independent medical examination by Dr. Murati. It was at the examination by Dr. Murati that the claimant first complained of hip and back pain.

At the regular hearing in this matter, the claimant admitted that he had never asked for medical treatment for his back or hip nor had he mentioned any such complaints during his treatment and independent medical examinations until he saw Dr. Murati. The claimant further stated that the back pain commenced in approximately July 1999, and that he was waiting for the pain to lessen but it never did. Lastly, at the regular hearing, the claimant noted that in his opinion he needs medical attention.

The record establishes that the claimant did not have a good result from the surgery. The claimant consistently complained of pain in his left knee after the surgery. Dr. Kramer agreed a good result was not reached and following surgery the strength in the quadriceps

muscle never really improved as much as the doctor would have liked. It is significant that Dr. Tisdale noted in his May 12, 1999, independent medical examination that the claimant had an antalgic gait favoring the left side. A year later upon his examination Dr. Murati also noted the limping due to the antalgic gait as well as significant atrophy of the calf and thigh muscles on the claimant's left leg. Dr. Murati attributed the claimant's back problems to the antalgic gait.

The ratings given the claimant by Drs. Kramer and Tisdale limited the claimant's permanent impairment to his left lower extremity. Dr. Kramer opined that the claimant had sustained a 9 percent permanent partial disability to his left lower extremity. Dr. Tisdale opined a 2 percent impairment for the partial medial meniscectomy and a 7 percent impairment for the cruciate ligament tear and repair. Lastly, Dr. Murati rated the claimant with a 2 percent impairment for the partial medial meniscectomy, a 17 percent impairment for the anterior cruciate ligament laxity and a 13 percent lower extremity impairment for atrophy of the thigh which combined for a 29 percent lower extremity impairment. In addition, due to the claimant's lumbar strain Dr. Murati rated a 5 percent impairment and for range of motion loss of the lumbar spine he gave an additional 2 percent whole body impairment. Finally, combining all of the ratings, the doctor concluded that the claimant had an 18 percent whole body permanent partial impairment. All of the doctor's ratings were based upon the *AMA Guides to the Evaluation of Permanent Impairment* (Fourth Edition).

CONCLUSIONS OF LAW

The first issue to address is whether the claimant gave timely notice and made timely written claim regarding his hip and back. The Administrative Law Judge concluded that the claimant had not provided timely notice regarding injury to his left hip and lower back. However, if the left hip and back injury is a natural and probable consequence of the claimant's earlier knee injury no additional notice under K.S.A. 44-520 and written claim under K.S.A. 44-520a is required. *Frazier v. Mid-West Painting, Inc.*, 268 Kan. 353, 995 P.2d 855 (2000).

The claimant was on light-duty work until January 1999 when he returned to his regular duties. Dr. Kramer agreed that a good result was not obtained from the knee surgery. In May 1999, the independent medical examination conducted by Dr. Tisdale revealed the objective finding that the claimant had an antalgic gait favoring his left side. The claimant testified that he did a lot of walking at work and that the movement and cold at work caused his left hip and low back problems. The claimant detailed the onset of pain in July 1999, and testified that initially he thought the pain would lessen. By May 2000, the hip and back pain was significant enough that the claimant voiced his complaints with Dr. Murati. The sequence of events is entirely consistent with an antalgic gait gradually producing the hip and back complaints. The uncontradicted testimony of Dr. Murati was

that the permanent disability to the claimant's back was the result of his injuries sustained working for the respondent.

It is the Board's determination that the claimant has met his burden of proof that the injury to his hip and back was a natural and probable consequence of the work-related injury to his left knee. *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 547 P.2d 751 (1976). This finding eliminates the need for notice pursuant to K.S.A. 44-520 and written claim pursuant to K.S.A. 44-520a. The Administrative Law Judge's determination that the claimant failed to give timely notice is reversed.

The claimant is not limited to a scheduled disability because of the determination that the back injury is a natural and probable consequence of the work-related knee injury. The claimant requested a whole body functional impairment and did not seek a work disability. The only testimony as to a whole body functional impairment was provided by Dr. Murati who opined that the claimant sustained an 18 percent whole body functional impairment. Therefore, the Board finds that as a result of his work-related injury on April 2, 1998, the claimant is entitled to an 18 percent permanent partial whole body functional impairment.

The Administrative Law Judge's award specifically limited future medical to the left knee only. The Board concludes that finding should be modified to reflect that the claimant is entitled to future medical upon proper application to the director.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Pamela J. Fuller dated October 4, 2000, is hereby modified. An award of compensation is hereby entered in favor of the claimant, Lauro Lopez, and against the self-insured respondent, IBP, Inc.

The claimant is entitled to 1.29 weeks temporary total disability at the rate of \$303.62 per week or \$391.67 followed by 74.7 weeks at \$303.62 per week or \$22,680.41 for an 18 percent permanent partial general bodily disability making a total award of \$23,072.08, which is presently due and owing less amounts previously paid.

The claimant is entitled to future medical upon proper application to the director.

The Board adopts all other orders in the Award that are not inconsistent with the above.

IT IS SO ORDERED.

Dated this _____ day of March 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

Copies to:

C. Albert Herdoiza, Attorney for Claimant
Wendel W. Wurst, Attorney for Respondent
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Workers Compensation Director